

Customer No. 25280

Case No. 2130

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Amendments:

Applicants have amended page 6 of the specification to correct a typographical error. The test method shown as "103-1981" should be "130-1981." Support for this amendment is found throughout the specification, such as, for example, on pages 5, 6, 16, 22 and 36, each of which shows the test method as "AATCC Test Method 130-1981." A copy of AATCC Test Method 130-1981 was also submitted by Applicants in the IDS dated September 5, 2000.

Applicants have also added dependent claim 60, which depends from dependent claim 54. New claim 60 is directed to silver zirconium phosphate (i.e. AlphaSan®). Support for this amendment is found in the specification, for example, on page 9, 15 and 27 (the examples section).

Applicants respectfully request entry of these amendments.

Double Patenting Rejection:

Claims 49-59 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,821,936.

The Examiner submits that although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim a wash durable antimicrobial treated substrate which includes an antimicrobial silver finish, at least one binder, a substrate selected from the group consisting of a yarn, a fabric comprised of individual fibers and a film, and wherein the substrate includes the finish after the substrate is washed using the AATCC Test Method 130-1982. However, in the '936 patent, the Applicant specifically teaches the type of antimicrobial activity and specifically disclosed the type of binder on the substrate. In the instant case, the claims are broader and the binder is generic but it would have been obvious to one having ordinary skill in the art if not obvious that if the same type of antimicrobial silver finish is disposed on the substrate and that the same type of wash cycle is used on the substrate there would have been a reasonable expectation by the ordinary artisan that the treated substrate would exhibit the *Klebsiella pneumonia* and *Staphylococcus aureus* log kill rates as claimed in the '936 and that the treated substrate is inherently met by the substrate taught in the '936 patent or obviously be met by the treated substrate.

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Applicants have submitted herewith a terminal disclaimer in order to overcome this rejection.

Claims 49-59 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2-3 and 6 of U.S. Patent No. 6,641,829.

The Examiner submits that although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim a wash durable antimicrobial treated substrate, specifically in the '829 patent the substrate would read on a carpeted flow article, which includes an antimicrobial silver finish, at least one binder, a substrate selected from the group consisting of a yarn, a fabric comprised of individual fibers and a film, and wherein the substrate includes the finish after the substrate is washed using the AATCC Test Method 130-1982. However, in the '936 patent, the Applicant specifically teaches the type of substrate being a carpet, the type of antimicrobial activity and specifically disclosed co-additive which can be a fluoroochemical and at least one binding agent. In the instant case, the claims are broader and the binder is generic but it would have been obvious to one having ordinary skill in the art if not obvious that if the same type of antimicrobial silver finish is disposed on the substrate and that the same type of wash cycle is used on the substrate there would have been a reasonable expectation by the ordinary artisan that the treated substrate would exhibit the Klebsiella pneumonia and Staphylococcus aureus log kill rates as claimed in the '829 and that the treated substrate is inherently met by the carpet taught in the '829 patent where "comprising" language has been used in both would have been obvious to one having ordinary skill in the art at the time the invention was made.

Applicants have submitted herewith a terminal disclaimer in order to overcome this rejection.

Claims 49-59 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of co-pending Application No. 09/585,762 (now allowed US Patent Pending).

The Examiner submits that although the conflicting claims are not identical, they are not patentably distinct from each other because both inventions claim a treated substrate comprising a finish which comprises metal particles, metal salts, metal oxides and any combination thereof which would read on applicants' silver particle containing compounds of the instant invention. The substrate in the '762 application includes at least one binder material which is selected from the group consisting of

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melamine formaldehyde resins, acrylic resins, PVC and vinyl copolymers and mixtures thereof. The broad recitation of "binder" of the instant application would read on the specific binder taught in the '762 application. Regarding the wash cycle and the retention of the finish such that the substrate, after washing, retains its antimicrobial activity has been taught in both applications. To add the binder in an amount which is not claimed in the '762 application but in the '381 would have been obvious to one having ordinary skill in the art because to add the binder in an amount which would provide best results so that the finish adheres to the substrate even after a number of wash cycles would have been obvious to one having ordinary skill in the art at the time the invention was made.

Applicants have submitted herewith a terminal disclaimer in order to overcome this rejection.

Claims 49-59 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7-8 and 10-11 of copending Application No. 10/439,139.

The Examiner submits that although the conflicting claims are not identical, they are not patentably distinct from each other because in the '139 application, applicant claims a yarn or spool which is more specific than the substrate of the instant invention but as claimed in the instant invention the substrate can be a "yarn." The yarn is then a textile as claimed in the '139 application, and both applications teach the same type of wash cycle, the same type of antimicrobial agent being a silver metal particle containing compound and the binder. The difference between the instant invention and that of the '139 patent is the steps of impregnating and pumping the dispersion. The treated substrate of the instant invention is more generic and the yarn, substrate or textile article would not be different than that of the instant invention and is rendered obvious because the article is essentially the same. The article is drafted as a product by process, and it maintained that the differences in the treated substrate of the instant invention and the yarn and textile as claimed are obvious differences and to include the specific amount of binder providing best results as claimed in the instant invention would have been obvious to one having ordinary skill in the art at the time the invention was made.

Applicants have submitted herewith a terminal disclaimer in order to overcome this rejection.

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Conclusion:

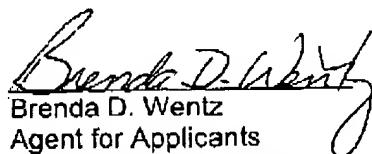
For the reasons set forth above, it is respectfully submitted that claims 49 – 60 stand in condition for allowance.

Should any issues remain after consideration of these Remarks and Amendments, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

In the event that there are additional fees associated with the submission of these papers (including extension of time fees), authorization is hereby provided to withdraw such fees from Deposit Account No. 04-0500.

March 30, 2007

Respectfully submitted,



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